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dependent corporate organization, whose rights and property are materially affected by the orders aforesaid, and was a necessary party to the proceedings, and as such entitled to reasonable notice and opportunity to make defense by appropriate pleadings, and to introduce evidence in its behalf, and to be heard thereon, before any order affecting its rights could be lawfully entered.

The court, therefore, in pursuance of article 12, § 156f, of the Constitution of 1902 of Virginia (Code 1904, p. cclv), without at this time passing upon any of the questions involved, except to reverse the order of May 20, 1908, imposing a fine of \$500 upon the Baltimore & Ohio Railroad Company, deems it necessary, in the interest of justice, to remand the case to the State Corporation Commission for such further proceedings to be had therein as may be necessary to a proper and final decision of the matters in controversy.

And it is so ordered.

Reversed.

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DICKENSON *et al.* v. PATTON *et al.*

Sept. 9, 1909.

[65 S. E. 529.]

**1. Fraudulent Conveyances (§ 95\*)—Vacating.**—Where complainant's husband contracted for the purchase of land, and paid part of the price, and built a house thereon, and afterwards sold his interest in a firm to his partner, when the firm and both partners were insolvent, the conveyance of the land shortly thereafter to complainant by her husband's vendor with his knowledge and consent was a fraud upon his creditors and void as to them.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig. §§ 243-288; Dec. Dig. § 95.\* 6 Va.-W. Va. Enc. Dig. 554, 556.]

**2. Fraudulent Conveyances (§ 24\*)—Form of Transfer.**—The form of a transfer is of slight importance, and an act will generally be treated as void against creditors, if fraud is shown.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Dec. Dig. § 24.\* 6 Va.-W. Va. Enc. Dig. 553.]

**3. Homestead (§ 180\*)—Establishment—Property Fraudulently Conveyed.**—Const. 1902, § 191 (Code 1904, p. cclxxi), and Pollard's Code 1904, § 3630, cl. 7, providing that a householder shall not be entitled to a homestead exemption in any property, the conveyance of which has been set aside for fraud or want of consideration, was intended to prevent a debtor from fraudulently disposing of his property

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\*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

to hinder creditors without forfeiting his homestead rights if the conveyance was afterwards set aside as fraudulent.

[Ed. Note.—For other cases, see Homestead, Cent. Dig. §§ 349, 350; Dec. Dig. § 180.\* Va.-W. Va. Enc. Dig. 627.]

**4. Homestead (§ 151\*)—Persons Entitled—Widow and Children.**—Under Pollard's Code 1904, § 3636, providing that, if no real estate is set apart as a homestead in the householder's lifetime, upon his death his widow and children may have set apart so much as the householder might have set apart, where by the express provisions of Const. 1902, § 191 (Code 1904, p. cclxxi), and Pollard's Code 1904, § 3630, cl. 7, the householder, if living, would not be entitled to a homestead in the property because he had fraudulently conveyed it, his wife and children are not entitled to a homestead therein.

[Ed. Note.—For other cases, see Homestead, Cent. Dig. § 286; Dec. Dig. § 151.\* 7 Va.-W. Va. Enc. Dig. 89.]

**5. Fraudulent Conveyances (§ 320\*)—Rights of Parties—Expenditures by Vendee—Payment of Purchase Money.**—Though a conveyance of property to a wife, on which part of the price was unpaid, was fraudulent as against the husband's creditors, the wife should be allowed out of the proceeds of the sale the purchase-money lien paid off by her, which lien will be considered in force for her protection.

[Ed. Note.—For other cases, see Fraudulent Conveyances, Cent. Dig. § 984; Dec. Dig. § 320.\* 6 Va.-W. Va. Enc. Dig. 629.]

Appeal from Circuit Court, Russell County.

Suit by Ida L. Patton and others against one Dickenson and others. From a decree for complainants, defendants appeal. Reversed.

*L. B. Quillen, H. A. & J. K. Routh and W. W. Bird*, for appellants.

*J. C. Gent and R. S. Meade*, for appellees.

BUCHANAN, J. The question involved in this appeal is whether or not the widow of W. L. Patton, deceased, is entitled to have the house and lot mentioned in the bill and proceedings set apart as a homestead for the benefit of herself and her minor children.

It appears that in March, 1906, W. L. Patton entered into an agreement with Wm. M. Hartsock for the purchase of a parcel of land containing four acres, at the price of about \$423. Mr. Patton was put in possession of the land, paid \$100 on the purchase price, and erected a dwelling house upon it at a cost of something near \$500, prior to January 1, 1907. About the last-mentioned date Mr. Patton, who was a member of the firm of

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

Fugate & Patton, a partnership engaged in the mercantile business, sold his interest in the firm to his partner, who assumed its liabilities. The debts, however, were not paid; the partnership and the members thereof being insolvent. On the 14th day of January, 1907, Mr. Hartsock, the vendor of the land, with the knowledge and assent of Mr. Patton, if not at his request, conveyed it to his wife upon her payment of \$324, the balance of the purchase money due thereon. In order to make that payment she borrowed the money, and to secure its payment gave her note, with sureties, and also a deed of trust upon the property conveyed to her.

In the bill filed by her to restrain one of the creditors of the firm of Fugate & Patton from subjecting the house and lot to the payment of a lien which it claimed to have on the property, Mrs. Patton alleged that she was the owner of the land and that it was not liable for her husband's debts. This was denied by the creditor. Other creditors of the firm became parties to the litigation by petition. An account was ordered to ascertain the liens upon the property. Before the account was taken Mr. Patton died. His widow filed her petition in the cause, in which it was alleged that the house and lot were worth \$800; that she had paid \$424, the purchase price of the land; that her husband had erected the building on the lot out of his own individual means; and asked that commissioners might be appointed to set apart his interest in the property to her and his minor children as a homestead.

Upon a hearing of the cause, the court, being of opinion that the widow and minor children were entitled to a homestead in the property, so decreed. From that decree this appeal was granted.

Unless Mr. Patton, the husband, could have claimed a homestead in the property as against the firm creditors, if the conveyance to his wife had been set aside in his lifetime because in fraud of his creditors, or for want of consideration, his widow and minor children were not entitled to a homestead in it; for manifestly the widow and minor children of a householder or head of a family cannot have greater homestead privileges or rights in his property than he himself has.

By section 191 of the Constitution of 1902 (Code 1904, p. cclxxi), and clause 7, § 3630, Pollard's Code 1904, it is provided that a householder or head of a family shall not be entitled to claim a homestead exemption "in any property the conveyance of which by the homestead claimant has been set aside on the ground of fraud or want of consideration."

Under the facts and circumstances disclosed by the record in this case, there is no question that the conveyance of the house

and lot to Mrs. Patton by Mr. Hartsock, her husband's vendor, was without consideration to Mr. Patton and in fraud of the rights of his creditors. If the husband had lived until the case was decided, the court would have been compelled to set aside the conveyance to his wife as in fraud of the rights of his creditors. If it were set aside on that ground, under the provisions of the Constitution and statute quoted, Mr. Patton would not have been entitled to claim a homestead in the property. The fact that he himself did not make the conveyance to his wife cannot affect the question, since it was made with his knowledge and consent, if not at his request, by his vendor, for the purpose of clothing his wife with property rights which belonged to him, and which his creditors had the right to subject to the payment of their debts.

Forms are of little moment; for, where fraud appears, courts will generally treat the act, however evidenced, as a nullity so far as the creditors are concerned. 20 Cyc. 391, and cases cited.

The evil intended to be remedied by the constitutional and statutory provisions quoted was to prevent a debtor from fraudulently or voluntarily disposing of his property to prevent his creditors from subjecting it to their debts, without forfeiting his right to a homestead exemption in the property if the disposition made of it was afterwards set aside as fraudulent or voluntary, as was the case under the homestead laws in force at the time the Constitution of 1902 went into effect. *Shipe v. Repass*, 28 Grat. 716; *Oppenheim v. Myers*, 99 Va. 582, 39 S. E. 218, and cases cited.

Since Mr. Patton, if he were alive, would not be entitled to a homestead in the house and lot, his widow and minor children, who claim through him, are not entitled to it. *Pollard's Code* 1904, § 3636; 21 Cyc. 576.

Whilst the conveyance to Mrs. Patton must be set aside as in fraud of the rights of her husband's creditors, it does not appear that she was guilty of actual fraud in the transaction, and she will be entitled to be repaid the purchase-money lien paid off by her out of the proceeds of the sale of the property, and to have that lien treated as in force for her protection.

The decree appealed from must be reversed, and the cause remanded to the circuit court for further proceedings not in conflict with the views expressed in this opinion.

Reversed.